

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

74-1078

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P/S

In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

Docket No. 74--1078

NARCISA LOPEZ

Plaintiff-Appellee,

against

HENRY PHIPPS PLAZA SOUTH, INC.

Defendant-Appellant

On Appeal From The United States District Court
For The Southern District of New York

SUPPLEMENTARY APPENDIX

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Relevant Docket Entries.

Date	Proceedings
December 5-73	Filed Stenographer's Minutes, Proceedings before Judge Griesa, October 2, 4, 1973

(Case called.)

(Discussion off the Record.)

- - -

THE COURT: Let me ask some questions if I could.

The plaintiff's affidavit says that her husband Thomas, who is involved in some of these incidents, has not lived at the apartment for one and a half years, but he appeared at the hearing as a tenant on March 6, 1973. So it is very difficult to say that his activities around the apartment building are irrelevant on the ground that he is simply away. He was at the hearing on March 6th, and he testified on behalf of the plaintiff.

So I am not just sure that I can believe that he is not in and about this apartment at times.

MS. LE BLANC: Mr. Lopez does not live with Mrs. Lopez.

THE COURT: What is he doing around the apartment then?

MS. LE BLANC: He comes to see his children. We do not represent Mr. Lopez.

THE COURT: But his activities have a very serious bearing on the case.

MS. LE BLANC: Well, your Honor, it is a -- there are several factors.

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One, I have advised Mr. Lopez that he must not come to the building again. We have no way of controlling Mr. Lopez. He does not live with Mr. Lopez. She does not wish him to live with her, but he is obviously somewhat less than a responsible person. He does not support the family and he does not live there.

He does come to the building. For a while, he having been told by Mrs. Lopez that he is not to come to the apartment, he is to come and meet his children down in the lobby, and I told him he was not to do that.

THE COURT: When did you tell him that?

MS. LE BLANC: I told him that in July.

THE COURT: Why was he at the hearing?

MS. LE BLANC: I do not know why he was at the hearing. We did not represent him. Of course, he knew of the matter and I assume appeared because he wanted to appear. We did not invite him to appear and we did not appear on his behalf.

THE COURT: Well, I don't have any real factual record indicating that he is not still a menace in the way that he is accused of being in the decision of the hearing officer.

MS. LE BLANC: Well; your Honor --

THE COURT: I take your word, you've asked him

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not to come back.

MS. LE BLANC: I have.

THE COURT: But he has.

MS. LE BLANC: I spoke to him very strongly about the fact that his presence was endangering Mrs. Lopez and I asked him not in front of his children.

I understand from the building manager that he was at least outside the building recently last week, but I told him not to be there.

Now, I think, your Honor, this raises a very serious question, and that is, Mrs. Lopez cannot force her husband -- there is no law that can prevent him from coming to that building, even if he had an order from the Family Court, which under the circumstances of this case he could not get, because he would have to physically assault Mrs. Lopez in order to get that order from the Family Court, and there is no evidence that he has recently done it, although I believe he has in the past, and that may be one of the reasons why she no longer allows him to live with her.

But in the absence of a court order ordering him to stay away from the building, there is no way you can make him stay away from the building.

THE COURT: Are they legally separated?

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MS. LE BLANC: No. I could commence a legal action. It is not a common practice among poor people. To divorce him, I don't know what the feelings would be. It is not an easy matter to communicate with Mrs. Lopez. She is an elderly woman. She speaks no English.

THE COURT: How old is Mrs. Lopez?

MS. LE BLANC: I have not asked her age but on looking at her, I would think she would be in her fifties. Her children -- her oldest child is nineteen. She looks very drawn. She is not --

THE COURT: You obviously have a point.

MS. LE BLANC: She is epileptic and is under treatment and takes pills for epilepsy.

THE COURT: Well, you certainly have a point. If you and she are trying to keep Mr. Lopez out of the building, then I take it --

MS. LE BLANC: Perhaps the defendant could call the police and have him arrested for trespassing on the grounds that since he does not live in the building he is not welcome to come into the building, and Mrs. Lopez has told him to get out of the building --

THE COURT: Well, let's pass the husband. I am going to assume for my purposes that she is separated from her husband, and that she really wants to be separated,

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and that she does not want him back, and that you and she are trying to have him stay away because, among other reasons, his hanging around presents a problem for her.

MS. LE BLANC: It certainly presents a problem for her.

THE COURT: I suppose he has no legal visitation rights.

MS. LE BLANC: No, no. The children are all adults, I mean, they are all teenagers, and they can go to see him. He is apparently living some blocks away where he could easily see them at his place. There is no reason why he would have to come to the apartment in any event.

THE COURT: Where does he live?

MS. LE BLANC: I asked him where he lives and he would not give me the address. He was living out in New Jersey, but the cousin with whom he was living in New Jersey moved too far away, and so he came back and he's staying with friends.

He is not exactly what I would call a cooperative person. I asked him for certain information and bring it in and supply an affidavit, but he did not appear.

THE COURT: Let's go to the children. The papers indicate that as of July, at least, one was in a

delinquent institution in New York - an institution for delinquents -- and then one was going to be tried for a criminal indictment in the New York State court.

Let's start with Thomas, Jr., who is seventeen, is he not?

MS. LE BLANC: I think that is his age. The boy Thomas, whom your Honor said was going to be tried.

THE COURT: Yes.

MS. LE BLANC: To the best of my knowledge, he has not yet been tried.

THE COURT: Is he out on bail?

MS. LE BLANC: It's hard for me to believe that he posted bail and I guess he's out on his own recognizance.

THE COURT: Okay. I'm looking at page 10 --

MS. LE BLANC: It is very difficult to get -- Mrs. Lopez, you know, I have a suspicion that the children do not tell her everything that is going on.

THE COURT: There is no question that the children, even if you eliminate Thomas, Sr., from the problem --

MS. LE BLANC: There's no question that the children live with her.

THE COURT: We've got to deal with those problems.

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MISS LE BLANC: There's a possibility that Thomas, Jr., may eventually go to jail, but at this point he is living in the house. The other child, who is supposedly in an institution, was apparently allowed to come home for the summer and has not as yet gone back.

THE COURT: You are going a little fast for me.

I have got to reconcile page 10 of Mr. Codman's decision of July 10, 1973. He says that Thomas Lopez was indicted by the New York County grand jury and trial is pending in the Supreme Court, New York County.

MS. LE BLANC: That's right.

THE COURT: You are telling me that to the best of your knowledge he has not yet been tried.

MS. LE BLANC: Yes, sir.

THE COURT: Do you know when that trial will take place?

MS. LE BLANC: I have no idea, your Honor. We do not represent him. We do not handle criminal cases. We are not the attorneys on the case, and I would have to check with Legal Aid who I assume is representing him to find out when the trial is going to take place.

THE COURT: Well, that is relevant, obviously.

MS. LE BLANC: Your Honor --

THE COURT: For instance, what I am trying to

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2 get at is this: I've got a record which shows that this
3 Mr. Codman took evidence and that he believed in fact that
4 there was danger to the building and to the tenants pre-
5 sented by the husband -- we'll put the husband aside for
6 a minute -- and by these boys. And there is nothing to
7 indicate that Mrs. Lopez directly and herself has done any-
8 thing wrong.

9 MS. LE BLANC: That's right.

10 THE COURT: So the problem really narrows down
11 to the boys.

12 MS. LE BLANC: I think, your Honor --

13 THE COURT: And Jose, according to Mr. Codman's
14 findings, Jose was adjudged a juvenile delinquent and was
15 remanded to a New York State correctional institution.
16 And you are telling me that he came home on some kind of
17 a furlough and he hasn't returned.

18 MS. LE BLANC: That's right.

19 THE COURT: Does he still have more time to
20 serve at that institution?

21 MS. LE BLANC: I don't know. Since he has
22 not yet -- normally, in the juvenile courts, when one is
23 remanded to an institution, he is in effect under the
24 jurisdiction of the court until he is a certain age, and
25 the court will merely release him, but he is not sent to

2 an institution for a year's term like they are in prison.
3 It's supposed to be a reform school, and if they feel that
4 he has in fact proved himself to be able to be a proper
5 member of society, then they will send him home where he
6 will then be under the jurisdiction of a probation officer
7 whom he sees regularly for counseling.

8 THE COURT: Well, you've got a lot of tenants
9 there.

10 MS. LE BLANC: Well, your Honor --

11 THE COURT: Please, let me finish.

12 You represent one tenant, but tomorrow somebody,
13 another tenant, could come to you - and I'm sure a lot of
14 them do -- and I have to worry, and the hearing examiner had
15 to worry, about not only Mrs. Lopez but all the other tenants.
16 And that's really the problem.

17 I know you've got the argument about impartiality,
18 but this man's report indicates - he has a list of everybody
19 who testified, everybody who came in or didn't come in, at
20 that hearing. And I don't think there is much doubt that
21 there were people, eye witnesses, who observed these boys
22 in dangerous activities.

23 And really, the problem is, what do you do about
24 this mother who is -- when these children, her teenage chil-
25 dren, are engaged in these activities? I think that's

1 the question. I mean, you can talk all you want about
2 partiality and whether there should have been a board
3 rather than an individual, but this wasn't a matter of
4 partiality, this fellow took testimony and there were eye
5 witnesses that came in there and testified to the facts.
6 And you haven't produced one single affidavit, really, deny-
7 ing those facts or allegations.
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9 Mrs. Lopez's affidavit doesn't in any whit deny
10 the facts, and I've really got a situation where the facts
11 are fairly clear. And it's a question, really, in my mind
12 what shall we do about this poor woman when she's got these
13 boys who are probably a menace to this building. I suppose
14 she can't control them. But it's probably a bigger problem
15 to her than anyone else, these kids. And what shall we do
16 about the interests of the other tenants.
17

18 How would you like to live in this building and
19 have these guys ranging around, you know, fiddling with
20 locks and doors and so forth and so forth.

21 MS. LE BLANC: Your Honor, what I wanted to
22 point out to you was that any of the crimes that the boys
23 are accused of, except for putting a key in a lock, one,
24 occurred in other buildings which have nothing to do with
25 the tenants of this building and in no way affects the ten-
ants of these buildings.

2 The serious charges brought against Thomas, Jr.,
3 regarding burglary involved a store several blocks away and
4 in no way involved the tenants in this building. There are
5 no criminal charges against them as a result of behavior
6 in the building.

7 THE COURT: Okay. I tell you, the geography
8 wasn't made clear and --

9 MS. LE BLANC: That's what I wanted to bring to
10 your attention because that is, I think, a very serious
11 factor in this case, and a serious factor goes to the ques-
12 tion that they have no regulations governing in advance on
13 what basis they will deny the renewal of the lease.

14 THE COURT: These are formalistic arguments.
15 Now, you don't have to have a regulation saying that a ten-
16 ant isn't supposed to burglarize a neighboring apartment.
17 You don't have to have a regulation saying that the occu-
18 pants of the building are not supposed to tamper with each
19 other's locks. And you're not --

20 MS. LE BLANC: There's no question, your Honor,
21 that under normal standards governing landlord-tenant law
22 in New York, that if you continuously, more than once, you
23 are caught burglarizing somebody else in the building or
24 tampering with other people in the building, that you would
25 be subject to being evicted as an undesirable, as a common-

1 law nuisance, but there are no - not only are there no
2 laws, but there are no cases which will permit you to evict
3 somebody, a landlord evict a tenant, because of the behavior
4 of the tenant or a tenant's household, which occurs outside
5 the premises where the tenant lives.
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7 Now, even the New York City Housing Authority had
8 one kind of following such procedures, and no longer fol-
9 lows such procedures since they've been brought into court
10 in a law suit.

11 THE COURT: All right. The charges which the
12 hearing examiner relied on, namely, were charge three, and
13 that relates to Thomas, Sr.

14 MS. LE BLANC: That's right.

15 THE COURT: Okay. Let's pass that for the
16 moment. He then goes to charge -- I'm talking about the
17 ones he mainly relied on.

18 MS. LE BLANC: Right.

19 THE COURT: Charge 8.

20 MS. LE BLANC: That's what --

21 THE COURT: That's the one about the door.

22 MS. LE BLANC: That's right.

23 THE COURT: And he says he found that there was
24 a security guard who testified, and Mr. Codman found that
25 the conduct referred to was of a dangerous nature to the

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safety and well being of the other tenants in the development and it is serious and it is substantial.

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He states, "I find the charge proven. Neither the Lopez boy was present at the hearing nor did his mother have anything to say to contradict the testimony of the security guard."

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Let's pass that for the minute because that occurred in the building. I want to get to these other charges which you say were completely unconnected with the building.

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Charge 10, he relied on, and that --

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MS. LE BLANC: That was a charge that there was a complaint of disorderly conduct, but the police records indicate conditions corrected. In other words, somebody presumably called up and said, "You know, somebody is breaking stone objects around the apartment inside the Lopez apartment itself."

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In other words, maybe Mr. Lopez threw something at Mrs. Lopez, and I'm just speculating. Somebody called the Police Department and said, "Somebody is throwing things around the Lopez apartment" and the police records simply indicate --

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THE COURT: The charge is that there was a complaint.

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plaint.

MS. LE BLANC: That's right.

THE COURT: Okay. Now, charge 12.

MS. LE BLANC: Well, the address where the acts were committed was 530 Second Avenue. This building is at 330 East 26th Street. A companion building to this is 444 Second Avenue. 530 Second Avenue is probably several blocks up from 330 East 26th Street.

THE COURT: Let me ask you this, Mr. Delman: Is that part of this complex or is it an unrelated building?

MR. DELMAN: The charge alleged in Charge No. 12 is not part of this complex.

THE COURT: All right.

MR. DELMAN: I might say, your Honor, that the charge alleged in Charge No. 13 is part of this building. The store entered was part of this complex.

THE COURT: Let's come to that. Now, Charge 13 deals with this incident where the son, Thomas, was found by Patrolman Custer to be in the back of a book store at 310 East 26th Street, and when he was discovered the boy ran into the bathroom in the rear, climbed to the ceiling where tiles had been removed. This was eye witness testimony by this Patrolman Custer.

And the Lopez boy pointed a gun at the policeman,

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whereupon the policeman shot him.

MS. LE BLANC: The answer --

THE COURT: Also in this ceiling area was the brother Jose, so both of them, at least according to eye witness testimony at this hearing, they were both present, one with a gun, at this book store.

MS. LE BLANC: The book store --

THE COURT: Where is this book store?

MS. LE BLANC: 310 East 26 -- the address of the building they live in is 330 East 26th.

MR. DELMAN: The book store is located in this very building on the ground floor, if your Honor please. One of these boys --

THE COURT: The address is so close and it would seem that it was part of this complex. Is it a store front?

MR. DELMAN: Store front premises in this very building, yes, your Honor.

THE COURT: So we can't just say that there was nothing going on except lock tampering in the building.

What do you say about this, the burglary where Thomas had a gun, and that really strikes me as a problem.

MS. LE BLANC: The case is before the Supreme Court for trial and therefore I do not know whether Thomas

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2 Jr. is pleading guilty or not guilty in the case. It in-
3 volved only the commercial space and not the residential
4 tenants in the building. The commercial space is separate
5 and there are no residential tenants living in the area
6 where the commercial space is. The way the building is
7 designed the commercial space is off to the side and --

8 THE COURT: All right. I tell you, I have to go
9 now and I won't be back until a little after two, and I know
10 you all suggested having a hearing after two. I thought we
11 could have a hearing now.

12 What is the status of the summary proceedings in
13 the state court?

14 MS. LE BLANC: The status is that final judgment
15 has been rendered in favor of the landlord, the defendant
16 herein; that a warrant of eviction has been stayed until
17 September 30th, and the rent paid by the Department of Wel-
18 fare should stop October 15th.

19 The Department of Welfare, because the defendant
20 made unclear the fact that they would continue if we got an
21 injunction, has not yet issued the amounts of money.

22 I might add, incidentally, that the reason the
23 rent has not been paid is because the defendant refused to
24 accept it.

25 THE COURT: Well, let's not get into that at this

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time.

MS. LE BLANC: If the defendant, under New York State law, refuses to accept the rent at a time when they notify the tenant they will not renew the lease, they should have continued accepting the rent until December 1st, after they had served a notice termination effective August 31st. As a result, the defendant -- the plaintiff, who was on welfare, when they refused to accept the rent, the Welfare Department took the rent off the budget.

The Welfare Department clearly owes them money, about \$1,500. In the absence of a court order that enjoins them from evicting her --

THE COURT: Well, I think you have really not fully taken into account the problems of this case. I think you were under a misapprehension about the location and nature of these activities. I am not being critical of you, but I go back to what I started with.

It seems to me that you ought to think somewhat more objectively than you have been about the problem here and start to propose a solution. I think, if I have any responsibility in this matter, which I do, I am very concerned about leaving these other tenants at the mercy of a couple of teenagers who are wandering around with loaded weapons, at least one of them.

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2 I would think you would be similarly concerned.
3 At the same time, I am concerned about this woman. I
4 would like to have more opportunity to read the papers and
5 to study these papers thoroughly. At the same time, I
6 would like you to think more about the case, and please
7 don't come back here with some extreme advocate's position.
8 I expect you to be, you know, objective and be judicial
9 about this, and I think we ought to have another hearing
10 tomorrow or the next day, and try to figure out what is the
11 best thing to do.

12 But I don't think you have quite grappled with
13 it, in all fairness.

14 MS. LE BLANC: Your Honor, I have spent a good
15 deal of time thinking about this problem, because we do
16 represent a lot of these people here --

17 THE COURT: I imagine you know a lot about these
18 problems.

19 MS. LE BLANC: I think we have got to recognize,
20 and I think you have put your finger on one --

21 THE COURT: Let's do this --

22 MS. LE BLANC: Your Honor, the Lopez's must live
23 next door to somebody. Some family, somewhere, is going
24 to have to live next door to the Lopez's, because we're not
25 going to keep them in Desert Island or someplace --

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THE COURT: Okay, but I'm not sure that is really much of a solution.

MS. LE BLANC: Well, I think your Honor must recognize that if you evict somebody from one building they've got to live somewhere else.

THE COURT: Well, maybe there is some measure that can be taken - I don't know, but I think you've got to think. I think we better have a --

MS. LE BLANC: Another aspect, maybe the criminal court would put the kids in jail.

THE COURT: I think we better adjourn this. What is the situation about eviction?

MR. DELMAN: Well, your Honor, we have not served the three-day notice, or seventy-two hour notice, I should say. Although one could be served, we have not served it. In any event, seventy-two hours would have to pass before the marshal could execute on it. This Court can, of course, fix a date.

I was going to suggest, if it is satisfactory to your Honor, I am going to be in New York County on Thursday, and if your Honor would like further argument or any further papers, I would be happy to be present on Thursday.

I just might make this caveat, your Honor. I

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hope your Honor realizes that by my sitting here being silent during --

THE COURT: Well, I simply didn't have the time to hear you.

MR. DELMAN: No, but during the answers to the questions, I haven't in any way agreed with some of the statements that were made by counsel in response to your Honor's questions.

THE COURT: Let's adjourn to twelve o'clock this Thursday, October 4th in this room.

MR. DELMAN: Thank you.

THE COURT: I think one thing that would help me, Mrs. Le Blanc, is for you to find more out about the status of these boys.

MS. LE BLANC: I will endeavor to find out, your Honor --

THE COURT: And please find out where they stand with respect to the juvenile institution, the younger one, Jose.

MS. LE BLANC: Right.

THE COURT: What is happening about the sentence commitment to that institution, and what is happening with respect to Thomas.

Are there any other children? I haven't heard

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about any others.

MS. LE BLANC: There is a third child, Nada, a daughter, who presents no problem whatsoever.

THE COURT: So we don't have any problem with that. It's really the boys.

MR. DELMAN: The two boys and the father.

MS. LE BLANC: If we were only luck enough to have only daughters.

THE COURT: Well, and also find out more, if you can possibly find out, about this father, what he has or had not been doing. And you do the same. Because this is the dilemma. You've got this woman --

MR. DELMAN: I think your Honor misunderstands one thing.

THE COURT: What?

MR. DELMAN: This apartment cannot under FHA regulations be occupied by this woman as the only tenant. They do not permit it.

THE COURT: You mean without her husband?

MR. DELMAN: That's right.

MS. LE BLANC: She's not the sole tenant because her daughter lives with her.

THE COURT: All right. We will adjourn until noon Thursday.

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MS. LE BLANC: And Mr. Delman will not attempt to evict my client in the meantime?

THE COURT: I understand that you are not even going to serve the seventy-two hour notice in the meantime?

MR. DELMAN: No, your Honor.

THE COURT: Okay.

MS. LE BLANC: Thank you, your Honor.

(Adjourned to October 4, 1973 at 12:00 noon, Room 506.)

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NARCISA LOPEZ

vs.

73 Civ. 4009

HENRY PHIPPS PLAZA SOUTH,
INC.New York, N. Y.,
October 4, 1973.

Hearing resumed.

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THE COURT: At the end of the hearing the other day I asked if we could get some updated information about the status of the husband of the plaintiff, Thomas Lopez, and the son, Thomas, Jr., and the other son, Jose.

MS. LE BLANC: Right.

THE COURT: Now, have you handed up an affidavit?

MS. LE BLANC: Yes, but that relates to legal issues, your Honor. I am prepared to make a full report with regard to the family pursuant to your request.

THE COURT: All right.

MS. LE BLANC: And I am prepared to make some suggestions with regard to assisting the family so that the family can remain in the house.

THE COURT: All right. Would you go ahead?

MS. LE BLANC: The husband - we were not able to see the husband. I sent a community worker from my office, who is here in court this morning, twice to the apartment

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and the building. Mr. Lopez was apparently working and worked until about three o'clock in the afternoon. He is living in New Jersey again.

THE COURT: I just wonder, this is a preliminary injunction hearing, and why don't you put this gentleman on the stand so that we can have evidence in the record.

MS. LE BLANC: I would be perfectly happy to have him take the stand. Some of the information I have most of it I would have to give to you because the people -- I have talked to probation officers, to the Council for the Division of Youth, and I would have to report to the Court what I have done, but I have not been able to get them all here.

THE COURT: You go ahead with your statement. What is the information about the husband?

MS. LE BLANC: The husband is working. We have not, because we were not able to get personally in touch with him to find out where his job is. I will continue to check that out and find out whether or not he is steadily working.

THE COURT: He lives in New Jersey to the best of your information?

MS. LE BLANC: That is my information but he is working in New York.

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2 THE COURT: Now, has he been around the apart-
3 ment and the building recently?

4 MS. LE BLANC: He has been around the building
5 but he has not been there for the last couple of days. Our
6 belief is that he apparently knew we were looking for him
7 and he did not appear.

8 THE COURT: Look, Miss Le Blanc, this is an
9 obvious problem.

10 MS. LE BLANC: Yes.

11 THE COURT: He obviously is not wanted.

12 MS. LE BLANC: That is correct.

13 THE COURT: But if he is going to be hanging
14 around - I'm not sure what effect that has, but it is a
15 problem.

16 MS. LE BLANC: Well, now that I'm aware of the
17 facts -- you see, I spoke to the husband and told him to
18 stay away from Thomas, if he would, in, say, late July or
19 early August. I was on vacation and therefore was not
20 aware of the fact until I got back, which was just a week
21 ago, that he had not been obeying my injunction, so to speak.

22 If the family is allowed to continue to live in
23 the building, I have this morning arranged for a social
24 worker from our office to be assigned to the family. The
25 social worker is Spanish-speaking. He is experienced. He

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has a Bachelor's Degree in Social Work and is presently working studying at night for his Master's in social work. He has been in our program for some seven years. He will work with the family and he will go to the building at least once a week to visit with the family, counsel with the children and with Mrs. Lopez.

THE COURT: What is his name?

MS. LE BLANC: Jose Nazario.

THE COURT: Just refresh my memory: who does he work for?

MS. LE BLANC: Me - MFI Legal Service. I should add, your Honor, I'm an associate director of MFI Legal Service and have been there for over ten years.

THE COURT: And how long has he worked for MFI?

MS. LE BLANC: Approximately seven years.

THE COURT: He is a social worker?

MS. LE BLANC: Yes, he is.

THE COURT: And he speaks Spanish?

MS. LE BLANC: Absolutely. He is Spanish.

THE COURT: What do your social workers do for the people to whom they are assigned?

MS. LE BLANC: Usually they work with cases that are involved with child custody and juvenile delinquency in the Family Court. This is an unusual court to have the

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problem presented, but it is the same type of problem. They will assist both the mother and the child. They will counsel on a regular basis. They will arrange to get the children in a program. If the children are not attending school, they will attempt to get them into school, if there is a reason why they should be in school. If they need medical assistance, they will arrange for medical assistance. If there is some problem with staff appointments, and they never make it, they will in fact take them to the place of appointment. They will make arrangements to getting them in after-school programs, into job training programs, and follows through to make sure that once they get into a program that they report.

They do not, after signing them up with a program sort of walk away from it. They follow it through as long as a year, two years, three years.

THE COURT: All right. What would Mr. Nazario do with respect to the Lopez family?

MS. LE BLANC: He will have -- to the degree that he will be able to visit or go to the home, once a week and see the mother and the boys there.

He will also be available to counsel with the boys individually in our office.

He has not yet met these boys. He has had a

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short period of time.

His impression from our description of the family is that the older boy Thomas probably needs psychiatric help. It would be my guess that's also true from what I've been able to gather from talking to the boy's lawyer on the criminal case, and from talking to the counselor of the Division of Youth. He is the younger boy's counselor but he is familiar with the older boy.

Since the older boy is above school age, or shortly ought to finish school, he will probably assist him and probably will work out a program for him and will assist him, if he can, in getting a job, or get him into a training program so that he will be able to get a job.

Both of the boys speak English as well as Spanish.

Now, the oldest boy's situation is complicated by the fact that at this point the criminal case against the oldest boy is scheduled for trial on October 12th in Part 39 of the Supreme Court of the State of New York.

He was indicted on two charges arising out of that December incident that we discussed the last time.

THE COURT: Are these trial dates at all firm?

MS. LE BLANC: No. His attorney said that they might --

2

THE COURT: Who is his attorney?

3

MS. LE BLANC: His attorney is a man named

4

Thomas O'Rourke.

5

THE COURT: Have you talked to Mr. O'Rourke?

6

MS. LE BLANC: I spoke to Mr. O'Rourke and he

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told me that it's a serious case, that he was indicted for

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burglary, two, and criminal possession of a weapon. The

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case has also got running with it an earlier case against

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the boy, a burglary that took place of a store several blocks

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away. All of them have been consolidated because they

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are serious charges.

13

THE COURT: Is there any chance of a plea here?

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MS. LE BLANC: There is apparently the possibility

15

of a plea, and there is certainly a possibility that the

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boy might go to jail. However, as a result of the last

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incident the boy was injured --

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THE COURT: He was shot.

19

MS. LE BLANC: He was shot. I have checked

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that out and apparently there were very, very serious

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wounds that he received. And one of the reasons it is

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believed that he probably would need psychiatric care is

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because of the nature of the wound. He was shot and at

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least one of his testicles was shot off and his stomach

25

was also injured.

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So the boy has been depressed and withdrawn since he emerged from the hospital after the wounds healed.

THE COURT: Just a second. He was in the hospital and then --

MS. LE BLANC: He was out on bail, \$200, which was put up by his godfather.

THE COURT: When did he get out of the hospital, just about, do you know?

MS. LE BLANC: I must say I don't know.

(Pause.)

MS. LE BLANC: He must have got out by June. He was in quite a while. As I remember, he must have been out by February because if I recall correctly he was present at the hearing.

THE COURT: Is he physically recovered?

MS. LE BLANC: Yes.

THE COURT: Is he able-bodied and can he get around?

MS. LE BLANC: Yes.

THE COURT: What does he do now?

MS. LE BLANC: He is doing nothing, your Honor. He is at home most of the time and he does nothing. He apparently is withdrawn very seriously.

THE COURT: What?

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MS. LE BLANC: He has withdrawn very seriously. When my assistant was up there the other evening, the boy was in the apartment, and he tried to talk to him, but once he began to talk the boy simply ran into his bedroom and closed his door and started to look at television.

THE COURT: This could affect how gamely he gets around and gets into mischief, I would think.

MS. LE BLANC: I would think so.

THE COURT: I don't know how good an effect -- I can't speculate -- I would think that it could possibly just absolutely stop him in his tracks.

MS. LE BLANC: That's right.

There hasn't been much reported difficulties since then.

THE COURT: Let's come to that later.

MS. LE BLANC: Yes.

THE COURT: Is there anything more on Thomas?

MS. LE BLANC: That's all I have been able to ascertain on Thomas. I can say that if he is out on bail it means that if he were picked up on another criminal charge, he would be back in Criminal Court. He has not, to the best of the knowledge of his attorney.

THE COURT: What about Jose?

MS. LE BLANC: Jose --

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THE COURT: Is Jose here?

MS. LE BLANC: Yes, this is Jose sitting behind here.

THE COURT: All right.

MS. LE BLANC: And Jose understands English thoroughly.

THE COURT: Was Thomas asked to be in court?

MS. LE BLANC: Yes, and he is apparently sick. I guess he apparently just didn't want to come, but he is apparently sick. He is definitely sick.

Jose, as a result of the robbery on December 19th, was adjudicated a juvenile delinquent. He was placed on voluntary placement --

THE COURT: Wait a minute. The date of that offense was what?

MS. LE BLANC: That was December 19th, the book store robbery.

THE COURT: All right.

MS. LE BLANC: As a result, he was in Family Court since he was under the age of sixteen. He was adjudged a juvenile delinquent and was given voluntary placement in the Great Valley Youth Camp which is run by the Division for Youth near Buffalo, New York.

He was there until June. The records of the

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Division of Youth indicate that he made a good adjustment, but that he was very manipulative and easily under the influence of someone stronger than himself.

He was sent home for a home visit for two weeks in June and did not return. It is the feeling of the Division of Youth probation people that he was under the influence of his brother that he didn't return.

THE COURT: He went to the Great Valley Youth Camp voluntarily.

MS. LE BLANC: Yes, he did. Since he has returned he has a counselor who is Mr. Windham at the Division for Youth. I spoke to him about ten minutes ago on the telephone.

He has to go and see Mr. Windham, and he last saw him about two weeks ago, on a regular basis, with his mother present. Mr. Windham feels that the boy really needs some kind of a program.

THE COURT: Is Jose in school?

MS. LE BLANC: He should be in school, but his mother -- he personally was not in school last year, being up at the Great Valley Youth Camp -- must take him down and enroll him, and Mrs. Lopez says that she has been so busy running around with this law suit that she hasn't had the time to take him to school.

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1 THE COURT: Can't he get in school?

2 MS. LE BLANC: He will get in school. I will
3 get him in school next week.
4

5 I met Jose for the first time this morning and
6 discovered that he was not yet in school, and I will see to
7 it that he is enrolled in school.

8 If he is in school that will provide him with
9 something to be done during the day, and I would think that
10 Mr. Nazario will work in getting him in some kind of a
11 recreation program after school, so that when he comes home
12 from school he won't have to be hanging around. And Mr.
13 Nazario will try to get him something to do that will keep
14 him interested.

15 My hope is that maybe Mr. Nazario, who is himself
16 a Puerto Rican and speaks Spanish fluently, will help pro-
17 vide a male influence, a positive male influence, for
18 this boy, who had the unfortunate influence of his father.

19 THE COURT: Is there anything else?

20 MS. LE BLANC: I can only say beyond that that
21 I did speak to several of the tenant leaders --

22 THE COURT: Several of the who?

23 MS. LE BLANC: Tenant leaders.

24 THE COURT: What do you mean by "tenant leaders"?

25 MS. LE BLANC: Because your Honor raised quite

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properly the question of the relationship to the other tenants in the building with the family.

I represent the Tenants' Association as an association, and I called several of the leaders of the association and discussed --

THE COURT: Just a minute. There is a tenants' association?

MS. LE BLANC: Yes, there is, your Honor.

THE COURT: And these tenant leaders -- is that a title or what?

MS. LE BLANC: Well, I call them tenant leaders because they are people -- the Tenants' Association unfortunately does not have as much depth as it should have, and since it does not have as much depth as it should have, there are people who do all the work and go to all the meetings, and the others -- they get the others to turn out at a rally or a demonstration, but they never do any work. So this is a voluntary duty.

I spoke to several of the women who have been the most active and with whom I have had dealings with in other matters relating to burglaries since last February. They were familiar with the Lopez family --

THE COURT: How many people did you speak to?

MS. LE BLANC: I spoke to two, and one of

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of them had two other people in her apartment when I spoke to her, and I stayed on the phone while she spoke to the two other people and she relayed it back to me.

THE COURT: All right. Who were the women you talked to?

MS. LE BLANC: Mrs. Aida Quinones.

THE COURT: And where does she live?

MS. LE BLANC: She lives in Apartment 26-G, 444 Second Avenue.

THE COURT: Okay.

MS. LE BLANC: The building in which the Lopezes live in, there are two towers, connected on the ground level, underground. One is at 444 Second Avenue and the other is 330 East 26th Street. They present there one project although there are two buildings, and the people move back and forth between the lobbies of the two buildings.

THE COURT: You spoke to Mrs. Quinones.

MS. LE BLANC: Yes, sir.

THE COURT: And who else did you speak to?

MS. LE BLANC: Mrs. Maria Nieves. She also lives in 444 Second Avenue.

THE COURT: Are these adjacent buildings?

MS. LE BLANC: Yes, they are part of the same complex. The defendant, Henry Phipps Plaza South, Inc.,

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the two buildings constitute Henry Phipps Plaza South, Inc.

THE COURT: What did Mrs. Quinones report? What did you ask her?

MS. LE BLANC: I asked her whether she was familiar with the Lopez family. She said yes, she was.

And I said, you know, what I want to know is whether the family is one of those families -- you see, the tenants group before had talked about this problem of vandalism and burglaries in the building, and they always indicated that they sort of know that there are families that are real problems, and why doesn't the management get rid of them.

So I asked her whether or not the Lopez family fell into this category, and if there was some feeling whether the Lopez family was one of the undesirable families that ought to be evicted, and she said no.

Beyond that, I asked her if she knew the kids and had she seen them around, et cetera. She said she used to see them all the time hanging around the lobby, but she had not seen them more recently. It has been some months since she had seen much of them, and everything had been very quiet.

Now, Maria Nieves - the other two persons whose names I don't know, were in Maria Nieves' apartment. One

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of the other two people who was in her apartment had never heard of the Lopez family. The other one said they know everyone has trouble with their kids, and there's no reason to evict this particular family because they didn't think the children in this family were --

THE COURT: What did Mrs. Nieves say?

MS. LE BLANC: Mrs. Nieves said that most people in the building -- she does a lot of talking to people in the building; she's one of the most active organizers -- she said that most people in the building don't care whether the Lopezes are evicted or not. They used to talk about Mrs. Lopez because of her drunken husband, but she said the kids are not a problem.

I tried to call one of the other tenant leaders who lives in the same building as Mrs. Lopez, but there was no answer, and I did not have time to locate her.

THE COURT: Well, what do you suggest?

MS. LE BLANC: What I suggest, your Honor, is that if your Honor grants us a preliminary injunction, conditioned on our providing the social worker, Mr. Nazario, and the family cooperating with Mr. Nazario, and that we come back, say, in three months, for a progress report on how things have been going in the next three months; and that if in fact at that time there is fresh evidence that

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2 the family is still a problem to the building, that the
3 family be evicted.

4 And if there is in fact evidence that there has
5 been substantial improvement, that the family is making a
6 serious effort to be good tenants, that at that time they
7 would have another couple of months to think about it.

8 THE COURT: Mr. Delman, one thing that did strike
9 me after we adjourned the other day is this. I think at
10 the time that Mr. Codman had this hearing and made his
11 findings -- basically, I find it difficult to quarrel with
12 his findings, but this is a kind of a situation where
13 things can change quickly, and a few months can make a lot
14 of difference, and I began to just look at dates.

15 Now, his report is dated July 10, 1973. Charge
16 3 -- well, there are lots of dates involved here and I
17 don't want to labor this -- but one of the most important
18 hearings he had was on March 6th.

19 MS. LE BLANC: Yes, sir.

20 THE COURT: At that time Thomas Lopez, the father,
21 was there and holding himself out as a tenant.

22 MR. DELMAN: That's correct, your Honor.

23 THE COURT: And so if I were Mr. Codman, I would
24 consider the facts about Thomas, the father, quite relevant
25 at that time. But, on the other hand, the incident about

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2 Thomas had taken place on March 20, 1972, about a year
3 earlier.

4 MR. DELMAN: No, that's not correct, your Honor.
5 The last incident about Thomas Lopez, the father, we happen
6 to have in the papers here - and there is a limitation there
7 which I will subsequently explain - was March 24, 1973.

8 Your Honor will find it on page 5 of my affidavit,
9 Item 7. Your Honor will also find it in report of Mr.
10 Codman, if I may give your Honor the number in the report
11 and the page.

12 THE COURT: I was referring to this Charge 3.

13 MR. DELMAN: Your Honor will find that commenc-
14 ing on page 13 of Mr. Codman's report.

15 THE COURT: Where is the letter of April 16th?

16 MR. DELMAN: I have a copy in my affidavit,
17 your Honor.

18 THE COURT: I've got it.

19 In any event, what we are dealing with is the
20 father Thomas, again, as of the time the hearing examiner
21 rendered his report.

22 MS. LE BLANC: Right.

23 THE COURT: If I had been him I would have con-
24 sidered the father's, Thomas's, conduct very relevant, and
25 he was at the hearing of March 6th, as I said and so forth.

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2 Now, it seems to me that we are now on the 4th
3 of October and it could very well be that the situation
4 about Thomas has changed. The representations are that
5 there are steps being taken to try to get him to stay away
6 and so forth.

7 What I am leading up to is this: I wonder if
8 this Mr. Codman should not have another hearing now to re-
9 view the current situation. After all, it's today we are
10 dealing with, and if Mrs. Lopez is to be evicted, it's go-
11 ing to be today or tomorrow, it wasn't July 10, and it
12 wasn't March 6, it's today.

13 Now, if -- and I don't know the facts; I've
14 gotten indications from Miss Le Blanc, and I don't know the
15 facts -- but it seems to me that the current facts ought
16 to be inquired about at this hearing, and the question is,
17 am I to do it or Mr. Codman.

18 I frankly think Mr. Codman did a pretty good
19 job in the Spring of '73. I don't fault it. And I just
20 suggest that Mr. Codman -- and if these people had been
21 evicted on July 11th, that would have been a different
22 story, but mercifully the things had not gone forward that
23 fast. So we're now in October.

24 I am really thinking of doing something like
25 this --

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MR. DELMAN: I wonder if your Honor would hear me before expressing any --

THE COURT: You will be able to respond if you hear me.

I guess what I'm thinking of is in a way a remand, although that isn't technically exactly what you do, but I think what I am considering is granting an injunction or asking you to consent to holding off any eviction action for a period of time, during which Mr. Codman could have another hearing to see whether there have been any recent disturbances involving the father or the two sons; take evidence about the status of the two sons, and the social worker's activities, the school situation, and so forth, and see what he would decide in view of that situation.

And then come back, and then I at least would have a current record to review. I've got a record that is really quite obsolete, in my view, right now. I would accept what Mr. Codman did, and I don't want to make his decisions for him, but at the same time I think that maybe he'd better make a current decision.

So what do you say to that?

MR. DELMAN: I have a number of things to say, your Honor, and perhaps I might say first that I hope your Honor will not be insulted by my candidness. I think Miss

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2 Le Blanc has been very candid with the Court and I am going
3 to be.

4 If your Honor please, your function here is not
5 to review Mr. Codman's acts, nor is it to review the manage-
6 ment's acts, nor is to review whether the determination of
7 management was correct or incorrect. That function is
8 lodged with the management, with its reviewing officer, and
9 if the tenant so desires, with the Supreme Court of the
10 State of New York by way of an Article 78 proceeding.

11 THE COURT: There I disagree with you. I just
12 point out, I say initially Mr. Codman is the decision-maker,
13 and I think I indicated that. I'm not running that build-
14 ing and I don't intend to. I respect his powers to find
15 the facts and make the decisions initially. My only func-
16 tion to see, in the broad sense, whether there was due
17 process. That includes whether there were proper procedures
18 and whether the determinations have substantial basis and
19 so forth.

20 Maybe I'm not phrasing it quite right, but I
21 understand, I am not Mr. Codman, but let's assume for the
22 moment that there was a violation of due process here --
23 assume just for the purposes of argument -- you are saying
24 to me that Mrs. Lopez has to go in an Article 78 proceeding.
25 I see no ability for that; in fact, it seems to me that the

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Supreme Court has held several times that in 42 USC 1983 action there is no requirement of exhaustion of state remedies except in the case of habeas corpus, and that is another statute. That has been held time and time again.

So I accept what you say about Mr. Codman having the right to make these primary and initial decisions, and I accept what you say about my scope of activities being very limited, but I don't say they have to go on an Article 78 proceeding.

All right, go ahead.

MR. DELMAN: I didn't want to get to the legal issues involved because your Honor was speaking of some social issues, and to which I have no objection on a motion for a temporary injunction, I think it is appropriate, but if your Honor will please hear me first on the social issues and then let's get on to legal issues, I think perhaps that would be best because that is what we have spoke about up until now.

THE COURT: Okay.

MR. DELMAN: Let's take Mr. Lopez, your Honor. And I might say this before I say anything else, your Honor: What is revealed in Mr. Codman's report - and the record here is the tip of an iceberg - your Honor well knows that there are acts up and down a large building which we have

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2 suspicion, of which we have some measure of proof, but of
3 which we have insufficient to be able to prove to the sat-
4 isfaction of a hearing officer as to what conditions truly
5 are.

6 Let me give just one example, or two examples.
7 During the pendency of these hearings there was an arsen-
8 ous fire in our office, which started in the cabinets in
9 which all of the Lopez records were kept, that were burned
10 to the ground. And the only reason we were able to pro-
11 ceed with the hearing was because I had photostatic copies
12 of all the records.

13 During the pendency of these hearings an apart-
14 ment was being worked on, I believe it was on the Lopez
15 floor, and that aptment was broken into and there was a
16 trail or steps in the plaster dust from the Lopez apartment
17 to the other apartment. We can't prove it was the Lopezes
18 who went in there.

19 There are charges in this hearing which were
20 denied and dismissed by Mr. Codman because they couldn't
21 be proven, including thefts of elevator workmen's tools and
22 clothes, including a locksmith's truck that was broken into
23 on the premises.

24 We are also further limited. Your Honor says
25 now it's October and the last hearing was in May. We had

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2 to get police records to support this matter. And we pro-
3 duced the police records up to a certain point before May.
4 We can't produce to your Honor police records since May.

5 There has been no delay on our part. We could
6 not proceed any further than we could, and we could not
7 proceed any faster than we could.

8 But now to Mr. Lopez specifically - and again
9 I'm outside of the record, admittedly, your Honor. Your
10 Honor reads the papers every morning as I read the papers
11 every morning. Mr. Lopez is employed. Mr. Lopez is
12 constantly in this building, but yet his family is on wel-
13 fare. And your Honor knows as well as I do the practice
14 that is coming about in this city of families separating
15 for the purpose of receiving welfare aid.

16 I don't believe that Mr. Lopez ever left the
17 apartment. I don't believe that Mr. Lopez does not reside
18 with the family. I don't believe that he isn't there con-
19 stantly, maybe not on a daily basis but on an every other
20 day basis. He has been constantly in the premises. He
21 has been constantly around the premises, admittedly by
22 counsel.

23 THE COURT: Wait a minute. Obviously, in a
24 situation like this there are various possibilities, and
25 obviously one possibility that one might think of is that

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there was an artificial or contrived separation to get welfare. But another possibility is - and this happens also, and we read about it also in the papers, and we know about it also in our daily lives, where a husband and wife separates, because the husband is a drunkard or he's a rough-neck or for other reasons.

I really cannot go on the supposition that this is a fraudulent separation. The indications are to me that Mr. Lopez is the kind of a fellow that a wife would not want around. If he is drunk, he has knives and so forth. Now, maybe some wives would, but a lot of wives wouldn't.

MR. DELMAN: May I proceed on that thing, your Honor.

THE COURT: All right.

MR. DELMAN: The first hearing was held in February or March. This very same contention of separation was made in February or March and it is now October. Yet since February or March of 1973 to October of 1973, Mr. Lopez has been constantly in this building; Mr. Lopez has on two occasions been accosted by the police in this building just during that period for alleged criminal acts.

THE COURT: You've got March '73 and what else?

MR. DELMAN: We've got March '73 and we have

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a police call of falling objects from the apartment which was also earlier, I believe.

THE COURT: When?

MR. DELMAN: Your Honor, that occasion was earlier. March '73 is the one.

THE COURT: All right.

MR. DELMAN: Now, Mr. Lopez is constantly in this building and, who by the way, has asserted his rights as a tenant and whom we have no right to bar from this building as a trespassor or otherwise because he is our tenant until such time as we are able to effectuate an eviction of this tenancy from this apartment.

Mr. Lopez has twice attempted to knife our security guards. I don't want to give him a third chance. And he will have a third chance so long as his family is in the building; whether he be actually separated or whether he be not separated, he will still have the right to constantly visit and be in this building.

Now, any restraint will permit Mr. Lopez to constantly be there.

THE COURT: That's a point, Miss Le Blanc that I think we've got to face.

Well, I don't know what the situation is. In the first place, as far as the lease, you've given me a

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lease that expired September 30, 1971.

MR. DELMAN: Your Honor, the lease was renewed from time to time thereafter. I don't have the records with me. That is part of the records that were burned in the office fire.

THE COURT: Well, you have given me a letter dated January 12, 1973 from HenryPhipps Plaza South to Thomas Lopes and Narcisa Lopez saying that the lease which expired December 31, 1972 will not be renewed.

What form did the renewal take?

MS. LE BLANC: We don't have copies of any other leases except the one --

THE COURT: I say, what form would the renewals take?

MR. DELMAN: The renewal was executed in the form just as a renewal, your Honor.

THE COURT: What form would that be?

MR. DELMAN: It would not be a new lease, but a single sheet renewal, that the old lease is renewed upon all the same terms.

THE COURT: On the same terms?

MR. DELMAN: Yes, sir.

THE COURT: Is that right?

MS. LE BLANC: I will take his word for that

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but the only form that Mrs. Lopez provides for us was that one.

THE COURT: Now, look, the last renewal was granted to December 31, 1972.

MS. LE BLANC: Yes.

THE COURT: Is Mrs. Lopez capable of being the sole tenant?

MS. LE BLANC: Yes.

THE COURT: I do think there is a point that if we are going to talk about renewal, nobody apparently, at least in this room, wants Mr. Lopez there.

MS. LE BLANC: Yes.

THE COURT: And he has a very valid point when he says that as long as Mr. Lopez is in some form a tenant they have very little recourse.

What do we do about that?

MS. LE BLANC: Mrs. Lopez has said that she will sign a lease in her name. She receives welfare checks for the rent and I believe they come to her name alone, but I would be happy to have my worker ask her.

(Pause.)

MS. LE BLANC: They come in her name along. She has been receiving it for approximately eleven years.

THE COURT: There is a special check to cover

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the rent?

MS. LE BLANC: Yes.

THE COURT: Well, the action is not on behalf of Thomas Lopez, so as far as I am concerned, I am not even being asked to interfere with termination or whatever you want to call it.

MR. DELMAN: Except, your Honor, that we have a single tenant which was entered into by the tenant, and only one tenant. And Mrs. Le Blanc said, in fact, that the tenant has been separated for eleven years --

MS. LE BLANC: No, I didn't say that; I said Mrs. Lopez has received welfare for eleven years.

MR. DELMAN: We have a single tenancy with both Thomas and Narcisa Lopez, and if what your Honor is thinking about is a separation of Thomas Lopez and the children from this apartment, the lease for this apartment cannot be renewed. This is a three-bedroom apartment. It cannot be occupied by Mrs. Lopez and her daughter.

MS. LE BLANC: There are two boys who live with her.

MR. DELMAN: I will get on to the two boys later.

THE COURT: Are you telling me that she cannot legally have this apartment for herself, her daughter and her two sons?

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MR. DELMAN: I don't know about herself, her daughter and the two sons, but I know that if any one of the sons were away, she would not be entitled to this apartment.

THE COURT: You have not made that complaint so far.

MR. DELMAN: I'm sorry, your Honor?

THE COURT: You have not made the complaint that she could not leave in the apartment --

MR. DELMAN: We have not made the complaint, if your Honor please, because that's not the issue here. We are talking outside of the issues --

THE COURT: Let's assume for purposes of this discussion that she could continue, barring other problems, she could continue her tenancy here herself, her daughter and her two sons.

MR. DELMAN: I have been handed, your Honor, I might mention, just at the moment, I have been handed -- your Honor asked me about other incidents during the pendency of the hearing -- two other incidents which occurred, which were not even charged or prosecuted, involving Mr. Lopez. One on March 17 --

THE COURT: What do you mean you were handed, who handed you those?

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MR. DELMAN: The manager.

THE COURT: Where is the manager.

MR. DELMAN: Over here, your Honor.

THE COURT: Okay.

MR. DELMAN: One which occurred on March 17th
and one which occurred on April 9th.

THE COURT: Involving whom?

MR. DELMAN: Involving Mr. Lopez. As I said,
these charges which occurred --

THE COURT: What were these incidents?

MR. DELMAN: On April 9th Mr. Lopez was found
drunk in the hallway of the building, lying down sleeping.
On March 17th Mr. Lopez again pulled a gun on a security
guard. That was March 24th; there was another incident on
March 17th.

THE COURT: Well, I have no doubt that Mr. Lopez
should not be there.

MR. DELMAN: Now, if I may, your Honor, proceed
to the -- well, I don't think that anything further has
to be said about the two boys. If your Honor after read-
ing this record, and after listening to the facts, that we
have two boys here of crucial years, who have committed all
of these acts, one of whom is a drug addict, one of whom
was found at 4:00 a. m. in the morning a block from the

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development with a loaded gun and a batch of knives -- that's the younger one; the older one having been arrested four times for burglary. This is all in testimony by the Police Department, not Mr. Codman's determinations, nobody's determinations; these are factual matters, backed up by police records, which are in the record before this Court --

THE COURT: When was the last incident involving Thomas, Jr.?

MR. DELMAN: An arrest of Thomas, Jr.?

THE COURT: Any incident you want to call to my attention.

MR. DELMAN: The last incident that we would have in the record, because it was limited as I say to police records, which were subpoenaed --

THE COURT: Wait a minute. You have just referred to a couple of pieces of paper that the manager just gave you.

MR. DELMAN: Is your Honor talking about junior or senior? These were in connection with Thomas Lopez, Sr. Your Honor asked me about Thomas Lopez, Jr.

THE COURT: You tell me what is the last incident you want to bring to my attention about Thomas, Lopez, Jr.

MR. DELMAN: The last one we know of was the one

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that is set forth in the papers, the 1972 burglary involving the shooting.

THE COURT: That is where he had the testicle shot off and his stomach was shot at, right?

MR. DELMAN: If that's what counsel says, I have no idea of the nature of the results.

THE COURT: I can well imagine that a person would not feel too sprightly after that.

MR. DELMAN: We have no further information on that, your Honor.

THE COURT: What is the last incident about Jose?

MR. DELMAN: I state again, your Honor, I have stated to your Honor two incidents which I say we cannot prove just who did it, but just brought them to your Honor's attention, but there are suspicions in connection with those two incidents.

THE COURT: What incidents specifically connected with Jose? What is the last incident?

MR. DELMAN: None other what is revealed in the record here, other than what I have informed your Honor as to suspicions which we cannot prove and therefore we are not prosecuting.

THE COURT: Mr. Delman, I want to tell you and I want to tell your manager that I am not really in conten-

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tion with what you are trying to do - trying to protect the building. Anybody would be sympathetic with that and understand that, and there is nothing more that needs to be said. But the problem is that I think we have uncovered information in the course of the two hearings we have had here that really neither one of you were thinking of when you walked into court the other day.

What I would like to have both of you do, including you and Miss Le Blanc, is adjust to a situation and be somewhat flexible. I think that is what is really necessary here. I think you came in here the other day, you had a legal position, and you had a good report by Mr. Codman dated July 10, you wanted to enforce it and you wanted to get the thing over with. But I just can't see doing that. I think the situation is probably substantially different today than the things Mr. Codman was considering.

I am very much of the opinion that Mr. Codman should review it --

MR. DELMAN: Your Honor, may I say this: I just want to say two things in response to what your Honor said. Number one is that as of the time when the Civil Court proceedings were had, which was September 20th, there was use and occupancy of \$1,504 that was unpaid from December 1972 through August of 1973, and since then there has

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2 been another, some \$360 in use and occupancy unpaid, which
3 comes to almost \$2,000.

4 Counsel has had fourteen days in which to get
5 the Department of Welfare to pay it. They have not paid
6 it. Counsel has requested of me some letter in which I
7 would assure the Department of Welfare that if they did pay
8 it the Lopezes would remain for some guaranteed period. I
9 cannot and will not do so.

10 I did give her a letter stating that the money
11 will be accepted. I furnished it to them at my request.
12 They picked it up at my office. But I have not received
13 any money.

14 THE COURT: I think you really have got to get
15 the rent.

16 MR. DELMAN: Let me take one further point up,
17 if your Honor please.

18 THE COURT: Yes.

19 MR. DELMAN: I cannot and will not recommend
20 to my client that there be any further hearings in this
21 matter. May I say why, your Honor?

22 Hearings have proceeded in this matter now since
23 January. There comes a time when there comes an end.
24 Now if these tenants had shown a change in attitude and a
25 change in their family relationship, between January and

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2 May, when the last hearing had been held, it would have
3 been part of the record and there would have been a basis
4 for action on it. There was no change. Things continued
5 as bad as they ever were and even worse.

6 Now there comes an end, and there comes also,
7 if your Honor please, an end of costs. I hope your Honor
8 realizes that every time I appear at a hearing and every
9 time I appear in court the tenants of this development pay
10 a bill. There is no landlord here, there is no profit
11 here. This is a development which is sponsored by a
12 non-profit sponsor, who takes nothing out of the building.
13 The tenants pay for all the costs and expenses, and the
14 Lopezes have been for us the most expensive family that
15 we have ever had in the building, both by way of damage to
16 the building, and by way of attorney's fees.

17 Your Honor, we simply cannot continue with hear-
18 ing after hearing, with reopening and reopening, with com-
19 ing back to court and back to court.

20 THE COURT: I would agree with you, but can't
21 you see this, Mr. Delman and your manager? You know, in
22 this world there are going to be special cases. There are
23 going to be the easy tenants, and then there are going to
24 be the hard tenants. I'm sure that's true in my building.

25 MR. DELMAN: Yes, your Honor.

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2 THE COURT: That the manager has to in my build-
3 ing, and I'm sure that you people have to, get after the
4 hard tenants, the hard cases, and they require attention
5 and they require expense. But I do not think that the
6 solution necessarily is here to throw them out, and still,
7 through your efforts and expense, and through being in
8 court now -- and your presentation was most effective -- if
9 the effect of this is to somehow get this family a little
10 more on the track than it was, then it seems to me that
11 you and your manager and the rest of us, it's worth a little
12 bit of our time and money.

13 Now, it's possible as a result of coming into
14 court and going through all this, that a lot of things are
15 done that weren't done before. Number one, have the
16 social worker assigned. Number two, get Jose back into
17 school. Number three, take effective steps to keep Thomas
18 out of there; there may be ways to do that. Get the older
19 boy maybe under some kind of treatment; and finally, avoid
20 having the family simply dumped out so that they have to
21 go to some other location.

22 Now, I say that if they can remain here and they
23 can become decent tenants, I say that we're accomplishing
24 a lot. I don't know, but all I can say is right now I've
25 got some reason to believe and hope that that can be done.

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2 You say to me, "You know, I don't think I should
3 go through endless more hearings and court appearances."
4 But I think it is worth a little, prescribed amount of fur-
5 ther time. I have in mind a period of thirty days in
6 which Mr. Codman is to review the situation, and take tes-
7 timony about what has been presented here, and really re-
8 port to counsel. And also see if there have been any
9 further incidents involving these boys or this father dur-
10 ing the last months, and see what is the situation about
11 the older boy. Is he really kind of laid up and hanging
12 around the apartment, or is he still going around being a
13 devil?

14 I don't know, and you can't tell me, and that
15 makes a heck of a lot of difference.

16 I understand your position that you won't con-
17 sent to it, but the more we talk the more convinced I am
18 of what I think I ought to do.

19 MR. DELMAN: If your Honor please, may I just
20 say this, and again I'm speaking as candidly as I can and
21 I hope your Honor will forgive my bluntness: But I have
22 my duty here, and my duties are to see to it that the
23 building housing hundreds of tenants does not go bad; it
24 has about ten tenants in that building that are apparently
25 causing it to become.

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2 My duties do not include worrying about the
3 social welfare of the Lopez family. They do not include
4 taking over duties and jobs which are to be performed by
5 the Federal, State and City administrations. My duties
6 and the duties of my client are to see that we run a clean
7 house for the benefit of tenants who are paying what is
8 for them a substantial rent for that privilege.

9 Now, if your Honor please, if the Lopez family
10 needs treatment, let them get it while they are living in
11 some other development and not ours.

12 THE COURT: Mr. Delman: I'm not suggesting
13 that you provide treatment, please.

14 I do have to hear about the rent. There is no
15 earthly reason why this landlord should not get his rent
16 for the time the apartment has been occupied, and I would
17 not under any circumstance suggest that they have to agree
18 to permit future occupancy in order to get paid for the
19 past. Now, let's get that paid up.

20 MS. LE BLANC: Let me explain, your Honor.
21 When we attempted to get the money, apparently the Welfare
22 Department worker called the manager. Whatever was said
23 led the Welfare Department to believe that even though they
24 were going to lay out \$1,500 and the tenant to be evicted
25 about three days later, needless to say although the Welfare

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2 Department clearly legally should have given the money, and
3 I would go to court on an Article 78 to make them give the
4 money if I had to, the Welfare Department when faced with
5 the fact that they would cough up \$1,500 and three or four
6 days later they were going to be evicted anyway --

7 THE COURT: However, if I grant any injunction
8 here it is going to be conditioned on payment.

9 MS. LE BLANC: If you will grant an injunction
10 and direct that the Welfare Department -- if you will
11 simply put in your order that the Department of Welfare
12 should pay the rent --

13 THE COURT: It will be conditioned on that.

14 MS. LE BLANC: I will see to it that we will
15 take it down to the Welfare Department, and if they do not
16 pay it I will take an Article 78 against them and mandamus
17 them to pay it because they clearly owe the money. There
18 is no doubt about it. The Welfare Department is notorious
19 for if there is any way they can get out of paying a lot
20 of money they will, and we will --

21 THE COURT: We have taken a long time and I want
22 to put a decision on the record. First of all, though,
23 what I am going to do, and I will try to explain it very
24 briefly on the record is this: I am going to grant a
25 preliminary injunction for a period of forty-five days

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and it is conditioned on the back rent being paid within fifteen days. If it is not paid, the temporary preliminary injunction will automatically be dissolved.

And I will also condition it that during that time the defendant will have the opportunity to hold another hearing. If it doesn't bother to hold the other hearing, well, then maybe that will have its effect, but it will have the opportunity.

Now, if a hearing is held, there has got to be very full cooperation by you and your client with that hearing officer. I was dismayed by the fact that when the hearings were held last spring there was really little or no response by your client. She didn't get up and try to explain anything. There was opportunity for her to have an interpreter which she didn't avail herself of. She didn't say one word about even attempting to control these boys. There wasn't a word --

MS. LE BLANC: I apologize for that.

THE COURT: That is a serious deficiency. Whatever in the way of assurances have been brought out have been brought out in this courtroom.

Now, it is hardly fair to the hearing officer and to the management to have that kind of thing. So I am going to expect that the fullest cooperation be given,

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and it will be very important when it is over whether that is given.

MS. LE BLANC: I will be personally present at the hearing, if and when one is held, and I assure you that I will have our social worker and interpreter there and that we will cooperate.

THE COURT: All right. Let me put on the record the decision.

(Continued on next page.)

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